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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,599	12/12/2003	Scott A. Meyer	GUID.142PA	1644
51294	7590	03/18/2009	EXAMINER	
HOLLINGSWORTH & FUNK, LLC 8009 34TH AVE S. SUITE 125 MINNEAPOLIS, MN 55425				ALTER, ALYSSA MARGO
ART UNIT		PAPER NUMBER		
3762				
MAIL DATE		DELIVERY MODE		
03/18/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/734,599	MEYER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Alyssa M. Alter	3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 22 September 2008.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 62-119 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 62-119 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 12 December 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 22, 2008 has been entered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 62-119 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 62, 89 and 118 recite the limitation "at least partially non-overlapping". It is unclear how the detection regions can be "at least partially" non-overlapping, since either the regions overlap or they do not.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 62, 64, 66-73, 84-89, 91-105 and 112-118 are rejected under 35 U.S.C. 102(b) as being anticipated by Florio et al. (US Patent Publication 20010049542 A1). Florio et al. discloses a system and method for determining single and bi-ventricular capture.

"The data acquisition system 90 may be coupled to the microcontroller 60 or another detection circuitry, for detecting an evoked response from the heart 12 in response to an applied stimulus, thereby aiding in the detection of "capture". Capture occurs when an electrical stimulus applied to the heart is of sufficient energy to depolarize the cardiac tissue, thereby causing the heart muscle to contract. The microcontroller 60 detects a depolarization signal during a window following a stimulation pulse, the presence of which indicates that capture has occurred. The microcontroller 60 enables capture detection by triggering the ventricular pulse generator 72 to generate a stimulation pulse, starting a capture detection window using the timing circuitry within the microcontroller 60, and enabling the data acquisition system 90 via control signal 92 to sample the cardiac signal that falls in the capture detection window and, based on the amplitude of the sampled cardiac signal, determines if capture has occurred" (col. 5, lines 64).

With bi-ventricular capture, there is a detection window, which has a first capture detection region for detecting the capture of the first ventricle and a second detection region for detecting the capture of the second ventricle. In the event that the capture of the first ventricle is sensed, then the system searches for the capture of the second

ventricle. Based on the capture sensed, the system classifies the cardiac response as non-capture, single capture or bi-ventricular capture and delivers stimulation based on this classification.

As to claims 64 and 96, in the event that the cardiac signal is determined to be a capture signal, then it thus exceeds the non-capture threshold.

As to claims 66-67, 97-98 and 114, "The microcontroller 60 further includes timing control circuitry 79 which is used to control the timing of such stimulation pulses (e.g. pacing rate, atrio-ventricular (AV) delay, atrial interconduction (A-A) delay, or ventricular interconduction (V-V) delay, etc.), as well as to keep track of the timing of refractory periods, PVARP intervals, noise detection windows, evoked response windows, alert intervals, marker channel timing, etc"(page 5, paragraph 57). Therefore, the evoked response windows, or capture detection regions boundaries, have finite dimensions with adaptable boundaries.

As to claims 68, 84-86, 99 and 112-113, Florio et al. discloses the detection of noise within a noise window, Which is an additional cardiac feature other than capture that is detected in an additional detection region.

As to claims 69-73, Florio et al. discloses on page 5, paragraph 58, the stimulation can be unipolar, bipolar or combination stimulation delivered to the ventricles.

As to claim 92, "While the following description is directed towards a bi-ventricular method of stimulating the heart, the present invention includes applying the method in both of the atria to perform bi-atrial stimulation" (page 4, paragraph 46).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1. Claim 65 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Florio et al. (US Patent Publication 20010049542 A1). Florio et al. discloses sensing bi-ventricular capture which is sensed by a time window with a first and second region. Inherently these two regions have respective intervals that are timed since they are located within the timed capture window. Therefore, Florio et al. discloses timing a first interval within a first capture detection region and timing a second interval within a second capture detection region.

In the alternative, although the examiner considers Florio et al. to disclose timing a first interval within a first capture detection region and timing a second interval within a second capture detection region, it would have been obvious to one having ordinary skill in the art at the time the invention was made to time the intervals within the capture detection regions since timing measurements are well known in the art to assist in the programming and modification of signal sensing parameters. Furthermore, such a

medication could provide the predictable results of modifying treatment to meet specific patient needs and requirements.

2. Claims 63, 90, 119 are rejected under 35 U.S.C. 103(a) as being unpatentable over Florio et al. (US Patent Publication 20010049542 A1). Florio et al. discloses in paragraph 59, page 5, "Atrial sensing circuits 82 and ventricular sensing circuits 84 may also be selectively coupled to the right atrial lead 20, coronary sinus lead 24, and the right ventricular lead 30, through the switch bank 74, for detecting the presence of cardiac activity in each of the four chambers of the heart. Accordingly, the atrial and ventricular sensing circuits 82 and 84 may include dedicated sense amplifiers, multiplexed amplifiers, or shared amplifiers. The switch bank 74 determines the "sensing polarity" of the cardiac signal by selectively closing the appropriate switches. In this way, the clinician may program the sensing polarity independent of the stimulation polarity".

While Florio et al. discloses the ability to sense polarity, Florio et al. does not disclose that the second cardiac signal has opposite polarity of the other signal. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system to sense a second signal with different polarity than the first signal since such a modification would provide the predictable results of determining repolarization cardiac signal.

As to claims 81-83 and 109-111, Florio et al. discloses the invention substantially as claimed but fails to teach the classifying a cardiac response as fusion. It would have been obvious to one having ordinary skill in the art at the time the invention was made

to incorporate an ability to determine and classify fusion since it was well known in the art to identify fusion beats in order to provide the predictable results of preventing fusion for being mischaracterized as capture. False detection of capture may lead to erroneous capture threshold values and/or erroneous automatic capture verification information.

As to claims 112-113, 106-108, Florio et al. discloses the invention substantially as claimed but fails to teach the inclusion of an intrinsic detection region. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate an intrinsic detection region since it was well known in the art to sense intrinsic activity in order to provide the predictable results of monitoring and determining normal (or intrinsic) cardiac activity.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alyssa M. Alter whose telephone number is (571)272-4939. The examiner can normally be reached on M-F 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Alyssa M Alter/  
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